Supreme Court, U.S.
FILED

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NO.

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1997

EARLENE POLYAK — Petitioner

vs

FRANK HULEN ESTATE,
AND DORA LEE HULEN,
AND WILMA LESNANSKY — Respondents

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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winter-
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QUESTIONS PRESENTED

1. Does the Court of Appeals for the Sixth Circuit delay and deny right of appeal when third complaint and order to sell the property at public auction is taking without just compensation and is taking in violation of the Fifth Amendment?

2. Does the Court of Appeals for the Sixth Circuit delay and deny right of appeal when third complaint and order to sell property at public auction is in violation of diversity of citizenship and equal protection provided in the Fourteenth Amendment?

3.Should the Court of Appeals for the Sixth Circuit deny right to sue in all Sixth Circuit District Courts and right of appeal for irreparable damage?

4.Is the injunction issued by the Court of Appeals in violation of 42 U.S.C. 1981 and 1983, Fifth Fourteenth and right to be heard in the First Amendment ?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
PETITION FOR WRIT OF CERTIORARI	1
OPINIONS BELOW	2
JURISDICTION	2
CONSTITUTIONAL PROVISIONS	3
STATEMENT OF THE CASE	6
ARGUMENT	14
CONCLUSION	27
CERTIFICATE OF SERVICE	28

TABLE OF AUTHORITIES

	Page
RRcivP R.26 Exception Res judicata	23
T.C.A. 29-27-117	15
City of Canton Ohio v Mayard 766 2d 236 238(1985).	23
Erie v Tomppkin, 304 U.S. 46 58 A Ct 817 82 L Ed 1188	21
Evelyn Phaler v Frances Pullian, 80-83 (1981) Maury County Court	25
G & C Merriman C v Saafield, 241 U.S. 22 28 36 S Ct 477 60 L Ed 868(1916)	22
Greyhound Lines v Detroit, 598 F 2d 884.	23
Feuntus v Shevin,(1972) 401 U.S. 92 S Ct 1983 32 L Ed 566.	20
Hagerty v Hargety,Tenn. 172 259 (1919).	25
Lindell v Lindell,135 Mon.368 368 371(1919).	25
Martin v Taylor,521 S.W. 2d 582 (Tenn. 1975).	25
Mulan v Hanover Bank & Trust Co, 339 U.S. 306 70 S Ct 652 657	20
New York v New York N.H. & R Co., 344 U.S. at 297 73 S Ct at 301	21
Nolan v California Costal Com'n, 836 17 S Ct 3141 3174 97 L Ed 677 (1977)	22
Palm Beach Postcpwright Palm Bch Post.... West Palm Beach Florida(1997)	14
Reeves v Reeves,58 Tenn. 669	25
Seawall et al. v New York City, 544 N.Y.S. 2d 542(App. 1989)	21
Suitum v Tahoe Regional Planning Agency, 117 S Ct 1659(1997).	19
Vandenburg v Molder, 4 Tenn. Civ App..... Higgins(1961)	25

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On Petition For Writ Of Certiorari
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For The Sixth Circuit

Petitioner prays that a writ of certiorari issue from this Supreme Court to review the abuse of discression and conflict of interest in the denial of the First Amendment right to be heard, Fifth Amendment right to due process, Seventh Amendment right of a jury trial, and due process and equal treatment provided in the Fourteenth Amendment to the Constitution to the pro se litigant in injunction on January 11,1993, Buford Evans & Sons v Earlene Polyak used in appeal of above case in 1-96-0112.

OPINIONS BELOW

The opinions of the United States Court of Appeals for the Sixth Circuit are set forth in Appendix A, and the opinions for the United States District Court are set forth in Appendix B. The opinions of the Chancery Court of Lawrence County are set forth in Appendix C.

JURISDICTION

The order of the United States Court of Appeals for the Sixth Circuit denying right of of appeal to United States District Court No. 1-96-0112 on Magistrate Judge's Report and and Recommendation filed on November 11, 1996, in 97-0508 was filed on March 10, 1998.

An earlier Application for Permission to Appeal was denied by the Court of Appeals in on December 3, 1996, and Motion for Reconsider ation was denied in 96-8552.

This Court has jurisdiction in timely petition for writ of certiorari in 97-0508 and application for extension of time has been

extended on May 26, 1998 to and including August 7, 1998 in Application A-882.

The jurisdiction of this Supreme Court is invoked pursuant to Article III, Sec.,2 which states that all judicial power shall extend to all cases of law and equity, between state and citizens of another state; between citizens of different states.

Jurisdiction is further invoked in 28 U.S.C. 1981, 1982, 1983, 28 U.S.C.1443(1)(2), Civil Rights Act of 1964 and 1991, First, Fifth, Seventh and Fourteenth Amendments.

The federal, civil and constitutional questions in the abuse of discretion and in the denial of due process and equal treatment in the deprivation of civil, federal and constitutional rights and laws in the above Courts.

CONSTITUTIONAL PROVISIONS

The pertinent portion of the First Amendment provides as follows:

> Congress shall make no law...abridiging the freedom of speech...and to petition the government for a redress of grievances.

U.S. Const.Amen. I.

The pertinent portion of the Fifth Amendment provides as follows:

> No ...person shall be deprived of life, liberty or property without due process of law; nor shall any private property be taken for public use, without just compensation.

U.S. Const. Amen. V.

The pertinent portion of the Seventh Amendment provides as follows:

> ...where the value in controversy shall exceed twenty dollars, the right to jury trial shall be preserved.

U.S. Const. VII

The pertinent portion of the Fourteenth Amendment provides as follows:

> No state shall make or enforce any law which shall abridge the priveliges or immunities of citizens of the United States;Nor shall any state deprive anv person of life. liberty or property, without due process of law.

U.S. Const.XIV.

28 U.S.C. 1443:

> Any of the following commenced in a state court may be removed by defendant to district court...
>
> (1) Against any person who is denied or cannot enforce in the courts of such state a law providing for equal civil rights of citizens of the United States
>
> (2) For any act under the color of

authority deprived from any law providing for equal rights.

42 U.S.C. 1981:

All persons within the jurisdiction of the United States sahll have the same right to sue...to the full and equal benefit of all laws.

42 U.S.C. 1982:

All persons of the United States shall have the same right in every state... to inherit, purchase lease and convey real and personal property.

42 U.S.C. 1983:

Every person who under the color of any statute, ordinance, regulation, custon, or usuage of any state... subject or subjected any citizen of the United State or other person within its jurisdiction thereto the deprication of priveleges secured by the constitution and laws shall be liable at law in equity of other proper proper proceeding for the parties.

28 U.S.C. 2403:

In any action...where the constitutionality of a statute of the state affecting public interest drawn into question.

T.C.ATennessee Statute 29-27-117:

If ...exact partition cannot be made without material injury to the parties or some one of them,the commissioners may make partition as nearly equal as they can and charge the larger shares the sums necessary to equalize shares.

STATEMENT OF THE CASE

This is the third complaint to sell the Petitioner's civil federal and constitutional rights to the same property without due process and equal treatment, without jury trial for damages and without any compensation at Public Aution in violation of constitutional rights and laws provided in the Constitution of the United States.

This third complaint filed in the same Lawrence County Chancery Court, by the same Clerk & Master, and before the same Judge.

On May 10, 1996, Lawrence County Chancery No. 7951-96 Dora Lee Hulen and Wilma Lesnansky v Earlene Polyak was filed for sale at Public Auction, and costs to Defendant(App. C p. 37).

The Second order to sell at Public Auction was submitted to Lawrence Chancery Frank Hulen and Wilma Lesnansky v Earlene Polyak No. 1974 No. 1974 on August 21, 1987, by Robert Boston, son of William Boston,Boston Bates & Holt with costs and leins on Defendant

and without any compensation for Petitioner's investment in the property(App. C. p. 43).

Petitioner was not notified of the time of sale, place of sale, or amount of proceeds from the sale, or Notified of order of sale entered for right of redemption and Right of Appeal FRcivP 3.

The first complaint to sell right in property at Public Auction was in Chancery No. 1974 Frank Hulen and Wilma Lesnansky, both Citizens and Residents of Lawrence County, Tennessee v Earlene Polyak non-resident presently residing at 3179 Middle-field Drive, Trenton, Michigan 48183 on April 19, 1983 (App. C. p.47).

This complaint for sale at Public Auction did not award Petitioner for any compensation for investment in property, and put a restraining order on Petitioner making any changes, repairs or improvements (App.C. p. 52).

At the bottom of the complaint to sell

there appears to be a hand written agreement between William Boston,Boston Bates & Holt and Frank Hulen to the effect "We absolutely ourselves bound for the cost of improvements not to exceed $500.00 (App. C.p.51).

Rena Hulen deceased intestate on January 9, 1976. Frank Hulen and Wilma Lesnansky within one (1) week initiated division in settlement by agreement.

Frank Hulen divided the estate by adding acreage behind the house, which sits in the south west corner, to his adjoining farm, and Wilma Lesnansky got the acreage to the east of house for her son to build a house, and this Petitioner got the small block house badly in in need of repair, and lot in front about ten (10) acres.

Petitioner and her husband traveled from Michigan to Tennessee each summer to remove roof repair house on her agreed partition for a retirement home at their own expense for seven years. Respondents did not invest any

work or money in the repair and maintenance of this property as provided in the Letter of Administration issued on August 30, 1976, to Earline Polyak, Frank Hulen,Wilma Lesnansky... and they are charges with all duties and responsibilities...(App.C.p. 56).

In 1983, Frank Hulen stated that he wanted Rena Hulen Estate"sold so his kids could buy it."Hearing on July 29, 1983.

This Complaint involved a hearing without jury trial, which counsel for the Defendant had promised, but took her before a state judge.Petitioner appealed to the Tennessee Court of Appeals order to sell property at Public Auction in Chancery 1974.

Appeal No. 83-405-II was dismissed on appeal of UNAPPEABLE JUDGMENT entered on December 20, 1983, which the State Judge ordered her to appeal signed by Charles Holt, Boston Bates & Holt and the Honorable Jim Hamilton on April 26, 1984.

Buford Evans & Sons sued Petitioner for

surveying the property for sale at Public Auction in 1974 on December 26, 1984.

The Circuit Court Clerk demanded that Petitioner get a copy of her solely owned property before she was allowed appeal to Circuit court, but denied appeal to the Court of Appeals of Tennessee,and Buford Evans put a lein upon Petitioner's solely owned property

Buford Evans surveyed property without Petitioner's knowledge or permission and he did not have a surveyor's license and charges are invalid.There is no final order in 1974.

Petitioner put complaints against Thomas Stach, Henry Henry & Stack for legal Mal-practice in the United States District Court, William Boston,Boston Bates & Holt and Buford Evans & Sons but she did not receive any relief for damages.The appeals were dismissed in the United States Court of Appeals, and

The Court of Appeals issued an injunction against Petitioner in Buford Evans & Sons on January 11, 1993(App. A. p. 10).

Petitioner checked the files in the Court of Appeals of Tennessee, and Circuit and Chancery Courts in Lawrence County,Tennessee, periodically, but found not final order for appeal or right of redemption in Tennessee.

Petitioner had possession of her agreed partition of property with electricity and telephone, and paid one-third of Property Taxes each year since 1976.

Petitioner was restrained from completing restoration and retiring and the full and equal enjoyment of her property in Tennessee.

On December 28, 1985, Petitioner put in a Complaint and Demand for Jury Trial for agreed Partition in Kind 29-27-117 T.C.A 1932, for house and ten(10) acres and damages and compensatory damages Chancery No. 7736-95 Earlene Polyak v Frank Hulen and Wilma Lesnansky. This is the first comlaint ever in Tennessee Court and under twenty year statute allowed to claim your property.

The Court Sua sponte dismissed complaint

on February 16, 1996, Petitioner appealed but the record was not forwarded for appeal.

The Courts of Tennessee continued to hold Petitioner's agreed partition in kind of this property without allowing her equal enjoyment of her property.

After counsel for Dora Lee Hulen and Wilma Lesnansky sued third time for sale at Public Auction, Petitioner complained for express permission and counterclaimed 7951-96 to the United States District Court for jury trial demand 1-96-0112(App. B.p. 17).

Complaint and Jury Trial Demand for relief in damages and compensatory relief Earlene Polyak v Frank Hulen Estate, Dora Lee Hulen and Wilma Lesnansky United States District Court No. 1-96-0112 was dismissed on Magistrate Judge Report and Recommendation (App.B.p. 22).

Petitioner's Non-consent to Magistrate Jurisdiction pursuant to 28 U.S.C.(c)(1) was disregarded (App. B.p. 20).

Petitioner submitted Application for

Permission to Appeal to the Court of Appeals Sixth Circuit No. 96-8552 Magistrate Judge's Report and Recommendation. The Court of Appeals ordered that Magistrate Judge's Report and Recommendation is not appealable and denied leave to appeal on December 3, 1996 (App.A.p.13).

Petitioner appealed the dismissal on Magistrate Report and Recommendation in the District court No. 1-96-0112 to the Court of Appeals on January 17, 1997, which was held over one (1) year without action No. 97-0508, which was treated as an appeal to Buford Evans Evans & Sons v Earlene Polyak No.92-5240 (6th Cir. Jan 11,1993) denied on March 10, 1998.App. A.p.2).

Appellant specifically worded appeal "Application Pursuant to Court Order Seeking Leave to Appeal on January 17, 1999.

Petitioner's motions for status reports were denied (App. A . p 4,8,15).

ARGUMENT

This Supreme Court ruled for the rights of the landowner for the first time in years as stated in the Palm Beach Post on May 28, 1997.

> " In a procedural but important victory for landowners nationwide, the Court ruled a California woman must get her day in Court to seek compensation for being barred from building on Nevada land.The Justices ruled unanimously that 82 year old Bernadine Suitum's 6-year old lawsuit is procedurally ready for ruling on merits.Copywright The Palm Beach Post, West Palm Beach, Florida (May 28, 1997).

1. THE UNITED STATES COURT OF APPEALS FOR SIXTH CIRCUIT DENIES RIGHT OF APPEAL TO THIRD COMPLAINT AND ORDER TO SELL RIGHT TO PROPERTY AT PUBLIC AUCTION IN TAKING WITHOUT JUST COMPENSATION IN VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENTS

The Court of Appeals denies right of appeal to third complaint and order to sell property at public auction without Petitioner ever being allowed jury trial for rights and investments, which amounts to taking property without just compensation in violation of the Fifth amendment, and taking without due process and equal protection under 29-27-117 Partition in Kind

Tennessee Code Annonated in violation of the Fourteenth Amendment and the deprivation of rights and priveleges and liability pursuant to 42 U.S. C. 1983.

The Court of Appeals uses old injunction it issued January 11, 1993, to bar Petitioner from right of appeal, and specifically responds and addresses Buford Evans & Sons v Earlene Polyak No. 92-5240 in Application Pursuant to Court Order Seeking Leave to File submitted in good faith in Earlene Polyak v Frank Hulen Estate, Dora Lee Hulen and Wilma Lesnansky No. 97-0508 in denial of appeal on March 10, 1998.

The Court of Appeals denied Application for injunction against sale on same old order Evans v Polyak on March 12, 1998.

Petitioner is denied due process and equal treatment in the taking of her property for sale at public auction under Tennessee Statute 29-27 117 Partition in Kind:

> If exact partition cannot be made without material injury to the parties, or some one of them, the commissioners may make the partitions as nearly equal as they

can charge the larger shares with the sums necessary to equalize all shares T.C.A 1932.

The Respondents initiated division in settlement by agreement within one(1) week after Rena Hulen demise on January 8, 1998.

Frank Hulen divided the property with adding acreage to the back of little old block house badly in need of repair sitting in the southeast corner, to his adjoing one hundred sixty(160) acre farm, with Wilma Lesnansky getting acreage to the east of house for her son to build, and Petitioner getting house and lot in front about ten(10) acres.

Petitioner removed and restored roof on her agreed partition and went from Michigan each year to Tennessee for seven(7) years which satisfies Tennessee seven(7) year possession statute.The Respondents did not do any work or invest any money in this restoration.Petitioner has never agreed to sell her partition in kind 29-27-117 T.C.A.

In third complaint to sell at public auction without ever allowing jury trial and without any compensation for petitioner's investment in restoration of house, interest in investment, accured value of house in the property denied federal protection Respondent requests parties divide proceeds equally with after sale with Petitioner paying all of Court costs.

Counsel for Respondents schedules and held hearing without any notification to the Petitioner and the Court order property sold with the expenses of the sale and the Auctioneer to be paid out of the proceeds of the sale

In the second order for sale of property in September 1987, without jury trial and without any compensation for Petitioner's investments in property, Counsel requested that Petitioner pay Auctioneer, Clerk & Master and court costs.

Petitioner was not notified of the time

of sale,place of sale, amount of proceeds,or where order entered for right of redemption and right of appeal.

In the first complaint to sell property at public auction without jury trial or any compensation, counsel requested that the proceeds of the sale after all expesnse incident to sale including attorney fees be divided equally between the heirs except that the cost of this case shall be deducted from Defendant's share.

This complaint was served with a restraining order against Petitioner making any further repairs or improvements.

Petitioner has been restrained from the full and equal enjoyment of her investment in her agreed partiton of property, interest in the investment, and accrued value in her right and investment in retirement home.

Petitioner has been obligated to maintain telephone and electricity and pay taxes in possession without "reasonable and

econically viable use of her property, and so amounted to taking of her property without just compensation and equal treatment under Tennessee law in the violation of the Fifth amendments as in Suitum v Tahoe Regional Planning Agency, 117 S Ct 1659(1997).

> Situm brought this 42 U.S.C. 1983 action alleging that in denying the right to construct a house on her lot, the agency restrictions deprived of her "all reasonable and econically viable use of her property without just compensation in violation of the Fifth Amendment.

The Court of Appeals injunction denying appeal to counterclaim for Petitioner's investment and maintenance in property held in county restraining order against her right to use and full enjoyment of her investment without a jury trial for damages and just compensation by state judges is in violation of taking of the Fifth Amendment and without notice of hearing and order for sale is in violation of the Fourteenth Amendment.

> ...this Court recognizes that prior to an action which will affect an interest

> in life, liberty or property, protected by the due process of the Fourteenth Amendment, a state must provide Notice reasonably calculated, under all, circumstances, to appraise interested parties of the pending of the action and afford them the opportunity to present their objections. Invoking of this elementary and fundamentalrequirement of due process. Mulane v Hanover Bank & Trust Co. 339 US 306 70 S Ct 652 657 94 L Ed 865 (1950).

2. THE COURT OF APPEALS DENIED RIGHT OF APPEAL TO COUNTERCLAIM FOR FEDERAL RIGHT TO JURY TRIAL AGAINST TAKING OF PROPERTY WITHOUT ANY COMPENSATION IN THE FIFTH AND WITHOUT DUE PROCESS AND EQUAL PROTECTION IN VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENTS

The Court of Appeals denied right to counterclaim under diversity of citizenship for right to jury trial in delayed order held for over one(1) year and while counsel for Respondents held hearing before State Judge without any notification to Petitioner.

> Fourteenth Amendment protection of property does not only safeguard rights of undisputed ownership, but also extends protection to any significant property interest including statutory entitlements.Feuntus v Shevin, (1972) 401 US 92 S ct 1983 32 L Ed 566.

Counsel for Respondents violated due process of Fourteenth Amendment protection in

in county before State Judge,intentionally.

> Notice by mail or other means as certain to ensure actual notice is a minum consti tutional precondition to a proceeding which will adversly affect the liberty or property interests of any party whether unlettered or well versed.New York v New York N.H. & R Co.,344 US at 297, 73 S Ct at 301.

The federal courts can give relief from County and State Judge denial right to a jury trial after three complaints and orders to sell property at Public Auction without any just compensation in diverstiy of citizenship and the only requirement being" that the federal Court have jurisdiction"..."matters governed by the Constitution"Erie v Tompkins, 304 U.S. 46 58 S Ct 817 82 L Ed 1188.

The Court of Appeals disregards that counterclaim for jury trial in District Court against the taking of property for sale at Public auction unconstitutionally confiscates private property without just compensation as in new York City Case and"these basic rights of possessed interest are set forth in Seawall et.a. v New York City, 544 N.Y.S. 2d

542(Ct. App. 1989).

> ...interferes with...use of property... as to constitute taking Nolan v California Costal Com'n, 836 17 S Ct 3141 3147 97 L Ed 677(1977).

The Court of Appeals disregards that the County and State Courts have never issued a final order for right of appeal and right of redemption and continues to use res judicata.

> The Supreme Court has stated it as " familiar law" that only final judgment is resjudicata. G & C Merriman Co, v Saafield,241 US 22 28 36 S Ct 477 60 L Ed 868(1916).

The Court of Appeals denies right of appeal for unconstitutional taking of property without jury trial and without any just compensation and protection of Non-consent to to Magistrate jurisdiction in District Court in Report and Recommendation grounded in res judicata.

The Magistrate Judge disregards the facts that this is a different case, with different parties in which Frank Hulen deceased, but Frank Hulen's wife sues to sell Petitioner's inherited right parole possed right with Frank

Hulen settlement by agreement in 1976, which is a different subject matter.

The Magistrate tries to evade different parties with a long allegation supporting res judicata in an Ohio prisioner case ruled on by the Court of Appeals for the - ixth Circuit in City of Canto Ohio v Maynard , 766 2d 236 238 (6th Cir 1985).

The District Judge dismisses counterclaim on Magristrate's long winding biased thesis.

> And some cases imply that permitting remand of pendent state claims denies defendant protection of the removal statute and encourages manipulative dismissals. In Re: Greyhound Lines v Detroit, 598 F 2d 884.

Rule 26 Exceptions to res judicata and Collateral Estoppel FRcivP provides relief from old argument based on res judicata as Petitioner has has never been granted constitutional right of jur trial in county and state courts.

> (d) the judgment in the first action was plainly inconsistent with a fair and equitable implementation of a statutroy constitutional scheme.

(e) For reasons of substance policy in cases involving a continuing WRONG. The plaintiff is given option to sue from time to time.

3. THE COURT OF APPEALS DENIED RIGHT OF APPEAL TO UNCONSTITUTIONAL TAKING OF PROPERTY WHEN THERE IS NO CAUSE FOR UNCONSTITUTIONAL SALE AT PUBLIC AUCTION WITHOUT ANY JUST COMPENSATION AND IRREPARABLE DAMAGE

The Respondents have no cuase to sell Petitioner's Partition in Kind 29-27-117 Tennessee Code Ammonated and supported further by Tennessee Case Law.

Respondents did not want little old block house with leaking roof badly in need of repair with two-inch sapplings growing through windows. They refused to invest any of their work or money in this repair and restoration under their highest standard of fiduciary duty as appointed Co-Administrators on August 30, 1976. They are in violation of thirty thousand ($30,000.00) dollar bond.

Tennessee Law and case law supports partition in kind 29-27-119 T.C.A.

The party insisting on sale must show by the facts the neccesity for such sale and

short of short of the clearest and most satisfactory proof could justify the Court in ordering a sale against the protest of one (10 of the tenants in common Reeves v Reeves, 58 Tenn 669, Vandenburg v Molder, 4 Tenn. Civ App. Higgins.

> ...the promise with the knowledge of the promiser takes possession of land and makes improvements. Court in almost all states have granted specific performance Hagerty v Hagerty,Tenn. 172 259(1919)and "Perhaps more frequesntly Courts have said taking possession and making improv ments constitutes "good consideration in equity" Lindell v Lindell,135 Mon. 368 371(1919).

And more recently"Parole partition of Land followed by possession is binding and enforceable." Martin v Taylor,521 S.W. 2d 582 (Tenn. 1975).

In 1981 and 1983 the Tennessee State Judges divided land in partition in Kind.In Wayne County, Tennessee onorable James Weatherford divided land in Wayne County between grandmother and childre. And in No. 80-83 Evelyn Watson Pahler v Frances Watson Pullian the Honorable Robert L. Jones

divided land in Mt Pleasant Tennessee, and Rattlesnake Falls lying in the 7th and 9th districts between sisters on February 9, 1981.

The sale of Petitioner's partition in kind at public auction is irreparable injury unjust and unfair, to the Co-Administrator, investing work and money in the repair and maintenance of this property and a continuing wrong in the investment in the property, interest in her investment and accured interest in the value of this property and the years which she has been restrainted in the full and enjoyment of this investment.

The Respondents ought not be UNJUSTLY enriched with the investment of work and money at the expense of the Petitioner.

The Respondent Frank hulen and Wilma Lesnansky initiated settlement by agreement in 1976, Petitioner accepted the partition in Kind they alloted to her. The petitioner took little house in need of repair and invested time and money for a retirement

home in Tennessee.

CONCLUSION

Petitioner prays that a writ of certiorari issue from this Supreme Court to review the Court of Appeals of right of appeal denial of irreparable damage in the right and enjoyment to never be regained in retirement home and remand case back to the District Court for right of jury trial for relief in damages and for just compensation before a fair and just tribunal.

Petitioner prays for such other relief as this Court deems fair and just.

on the 6th day of August, 1998.

Earlene Polyak

3179 Middlefield Drive
Trenton, Michigan 48183
(734) 676-3364

I certify that the above is to the best of my belief and knowledge.

_____

STATE OF MICHIGAN
COUNTY OF WAYNE

Com'n expires:

_____

NOTARY PUBLIC

CERTIFICATE OF SERVICE

certify that true copy of the Petition for Writ of Certiorari has been served by United States Mail, First Class to Dalton Mounger on August 6, 1998.

EARLENE POLYAK

APPENDIX A

In the United States Court of Appeals for the Sixth Circuit.Appeal as a Right

Dora Lee Hulen and Wilma Lesnansky v Earlene Polyak 97-0508(D.C. 1-96-0112).

Earlene Polyak v Frank Hulen Estate,Dora Lee Hulen and Wilma Lesnansky Counter-claim No. 97-0508(D.C. 1-96-0112).

Filed:January 17, 1997.

Denied: March 10, 1998.

Before: KRUMPANSKY, NELSON, and BATCHELDER, Circuit Judges.

Application for Leave to Appeal 96-8552 (D.C. 1-96-0112).

Denied: December 3, 1996.

Petition For Rehearing: Denied March 26, 1996.

Before: KENNEDY, BOGGS,and WOOD,Circuit Judges.

No. 97-0508

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

In re: EARLENE POLYAK FILED MAR 10 1998

Movant ORDER

Before: KRUMPANSKY, NELSON and BATCHELDER, Circuit Judges

This pro se litigant, Mrs Earlene Polyak, applies for leave to appeal a district court judgment in Buford Evans & Sons v Earlene Polyak No. 92-5240(6th cir. Jan 11, 1993), the court enjoined Mrs Polyak from filing an appeal unless she first fil" Application Pursuant to Court Order Seeking Leave to File" and court granted application. See Buford Evans & Sons No. 92-5240, 1992 WL 301959(6th Cir Oct 20, 1992) (ordering Polyak to show cause why an injunction should not issue and setting forth proposed injunction).

The court expressley enjoined Mrs. Polyak from presenting any claims related to or arising from litigation originating from partition sale of land in Tennessee inherited by Mrs Polyak

objections to fees or sanctions for which ordinary review has been exhausted, or claims against any state or federal judge, officer, or employee for actions taken in the court of their of their official duties exercised in connection with Mrs Polyak's previous litigation. The court ordered Mrs Polyak to certify her action is taken in good faith and the claims she raises are not frivilous or malicious.

Upon consideration, we conclude that Mrs Polyak's immediate application does not comply with the court's injunction. Mrs Polyak's failure to comply strictly with the terms of this court's injunction is grounds for summarily denying her leave to appeal is hereby denied.

Accordingly, the application for leave to appeal is hereby denied.

ENTERED BY ORDER OF THE COURT

Signed Leonard Green Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Filed Jan 31, 1997

Ms. Earlene Polyak
145 Lakeside Drive
Jupiter, Florida 33458

3179 Middlefield Drive
Trenton, Michigan 48183

RE: Case No. 97-508
In re: Polyak

Dear Mrs. Polyak:

Your request for leave to appeal has been docketed as case No. 97-508. Once a decision been reached, you will be notified.

Signed
Mary Petterson
Case manager

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED JAN 5, 1998

Earlene Polyak
3199 Middlefield Drive
Trenton, Michigan 48183

Re: 97-508
In re: Polyak

Dear Mrs Polyak:

Your second motion for reconsideration of the request for status report report and briefing schedule will not be filed.

The Court has not made a decision on Your request for leaVE to appeal. Since your request for leave to appeal.Since you have not been granted leave to appeal a briefing schedule cannot issue.

Very truly yours,

s/Leonard Green,Clerk

No. 97-0508
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK FILED MAR 12 1998

Petitioner

Before: KRUPANSKY,NELSON and BATCHELDER, Circuit Judges.

The petitioner has submitted to the court an emergency application for an injunction enjoining the sale of real estate, pursuant to an order of the Chancery Court for Lawrence County, Tennessee, scheduled for March 14, 1998. She asserts such an injuntion is needed because the state court denied her a jury trial in the under lying estate proceeding for partition of property.

In order of January 11, 1993, this court enjoined the petitioner from filing further appeals in this court unless she first filed an application for leaveto appeal and certified that the claim or claims to be raised were new and had never previously been presented to or disposed of on the merits by any federal court. That order expressley prohibited the petitioner from presenting inter alia, any claims related

to or arising "from the partition sale of land in Tennessee inherited by Mrs Polyak and her siblings as tenants in common..."The petitioner filed such an application for leave to appeal in this vase and, in order on March 10, 1998, we denied such application on grounds it did not comply with January 11, 1993, injunction. There is nothing presented in the present application for injunctive relief which would warrant re-consideration of that order or a different result

It therefore is ORDERED that the application is denied.

ENTERED BY ORDER OF THE COURT

Signed Leonard Green Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

January 9, 1997

Roger Milan, Clerk
Middle District of Tennessee
801 BroaDWAY
Suite 800, U.S. Courthouse
Nashville, Tennessee 37203

Re: Notice of Appeal in 1:96-112
Dora Lee Hulen V Earlene Polyak

Dear Mr. Milam,

The district clerk's office transmitted the customary appeal packet in case to our office.Because of injunction entered by the court of appeals in 1993 which sets conditions on Mrs Polyak iniating appeals, the Clerk's office will NOT be acting on the transmittal.

In case no. 92-5240, Buford Evans & Sons v Earlene Polyak, the court enjoined Mrs Polyak from filing and appeal unless she filed an Application Pursuant to Court Order seeking Leave to File and the court granted application.The injunction is broader than what I have described.I am enclosing a copy so you can read its terms. As to this attempted appeal from Judge Wiseman's order of November 5, 1996,she did not file the requiredapplication,only a motion to the court of appeals for a protective order which will be returned unfiled.

A final note, Mrs Polyak did apply for permission to appeal the magistrate's underlying October 15th report and recommendations but the court denied application (acopy of that order is also enclosed). A motion for reconsideration is pending.

If you have any questions about injunction, please call me at the clerk's office.

Sincerely yours,

Signed
Janice E. Yates
Chief Deputy Clerk

cc: Mrs Earlene Polyak(w/enclosure)
Dalton M. Mounger

NO. 92-5240

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BUFORD EVANS & SONS

Plaintiff-Appellees FILLED JAN 11 1993

v

EARLENE POLYAK

Defendant-Appellant

BEFORE: KEITH NELSON and RYAN Circuit Judges

This case is before the court on Mrs Polyak response to show cause order issued by this court The show cause order requested Mrs Polyak to indicate why injunction should not be entered against her to prevent her from filing continued frivilous litigation. We have examined Mrs Polyak's response and it contains no arguments that would prevent the issuing of an injunction See Lysiak v Comm'n,816 E 2d 311 312-113(7th Cir 1987).

Unpon consideration of the court is is here by ordered that Mrs Earlene Polyak be enjoined from filing, instituting, continuing or prosecuting any civil action in this or any

other federal court without first obtaining leave of that court.

In seeking to file Mrs Polyak shall certify that the claim or claims she wishes to present are new claims never before raised and disposed of on the merits by any federal court.Such claim may not be related to or rise from the following litigation orignating from the partition sale of land in Tennessee inherited by Mrs Polyak and and her siblings as tenants in common, objection to fees or sanctions for which ordinary review has been exhausted, or claims against any federal judge, officer, or employee for actions taken in the course of their official duties exercised in connection with mrs Polyak's previous litigation.She shall certify that her action is taken in good faith and the claims she raises are not frivolous or malicious.

A motion for leave to appeal must be captioned"Application Pursuant to Court Order Seeking Leave to file" and Mrs Polyak must affix a copy of thisthis order to that motion.

Failure to comply atrictly with the terms of

this injunction will be grounds for summarily denying leave to file. Claims considered malicious, frivolous, or brought in bad faith may be grounds for civil contempt proceedings.

The following procedures shall govern any appeals in this court filed by Earlene Polyak until such time as the court may order otherwis

Upon timely receipt of a complete petition for leave to appeal, the court shall direct the clerk of the appropriate lower court to transmit the full record of the underlying case.No further proceedings shall take place in this nor shall any filings be accepted,until this courthas reviewed the petition and the record to determine whether Mrs. Polyak's appeal presents a colorable claim. This injunction applies to all appeals and other actions commenced after the date on which this order is filed.

ENTERED BY ORDER OF THE COURT
Signed Leonard Green Clerk

BEST AVAILABLE COPY

NO. 96-8552

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

IN Re: EARLENE POLYAK

FILED DEC 3 1996

Before: KENNEDY,BOGGS,and WOOD, Circuit Judge

Earlene Polyak a pro se Michigan Litigant,applies for leave to appeal a magistrate judge's Report and Recommendation.

A review of the documents before the court indicates that the magistrate judge filed a report and recommendation on October 15, 1996, Polyak applies for leave to appeal from that report and recommendation.

An order of a magistrate judge is not appealable unless the magistrate judge is given plennary jurisdiction pursuant to 28 U.S.C.(c)(1).Ambrose v Welch, 729 F 2d 1084, 1085 (6th Cir 1984.The magistrate judge was not given plenary jurisdiction.

ENTERED BY ORDER OF THE COURT
Signed Leonard Green

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

In re: EARLENE POLYAK

Defendant/Movant

FILED MAR 26 1997

No. 96-8552

Before KENNEDY,BOGGS,AND WOOD. Circuit Judges

Earlene Polyak a pro se litigant has filed a petition for reconsideration of this Court's order of December 3, 1996, denying her application for leave to appeal a magistrate judge's report and recommendation.

Upon careful consideration, this panel concludes that it did not misapprend or overlook any pint of law or fact when it issued its order FED.R. App. P.40(a).

The petition for reconsideration is denied.

ENTERED BY ORDER OF THE COURT

S// leonard Green, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED JAN 31,1997

Earlene Polyak
145 lakeside Drive
Jupiter, Florida 33458

RE: 96-8552

Dear Mrs. Polyak:

This is in response to your request for status report.

We are in receipt of your notice of appeal received in this court on November 13, 1996. This was filed under the above styled case and forwarded to the court along with your application for permission to appeal, which was filed on October 29, 1996.

The application was denied in December 3, 1996. A motion for reconsideration is now pending.

Very truly yours,
s/Leonard Green, Clerk

APPENDIX B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

In the United States District Court, Middle District of Tennessee,Columbia Division.

Dora Lee Hulen and Wilma Lesnansky v Earlene Polyak No. 1-96-0112(Chancery Court of Lawrence County 7951-96)

Earlene Polyak v Frank Hulen Estate, Dora Lee Hulen and Wilma Lesnansky COUNTERCLAIM.

Filed: May 10, 1996.

Removed under Diversity of Citizenship To the District Court June 19, 1996.

Non-consent to Magistrate Jurisdiction on July 24, 1996.

Before: The Honorable Thomas A. Higgins.

Dismissal:November 5, 1996.

Magistrate Judge:William J. Hayes Jr.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

DORA LEE HULEN

v

EARLENE POLYAK

FILED JUN 19,1996

No.1-96-0112

ORDER

The defendant Earlene Polyak, tendered[1] on June 7, 1996, to the clerk certain papers styled Answer to Complaint Counterclaim and Jury Trial Demand for filing in this Court.Attached to the foregoing are summons and complaint styled Dora Lee Hulen and Wilma Lesnansky v Earlene Polyak No. 7951-96 filed May 10, 1986, in the Chancery Court of Lawrence County, Tennessee.

The complaint seeks the partition sale of real property consisting of 42.5 acres in Lawrence County with a house and barn located thereon.

Mrs. Polyak seeks to remove this action based on diverstiy of citizenship and amount of controversy.

The Court construes the submissions as a notice of removal.

The Clerk is directed to file the pleadings as of the date they were tendered, that is June 7, 1996.[2]

The Clerk is directed to send a copy of this order to the defendant. Mrs Polyak;Mr. Dalton Mounger attoreny for the plaintiffs, at his address given on the complaint, 806 A South Garden Street, P.O. Box 1468, Columbia Tennessee 38402, and to the Clerk and Master of the Chancery court of Lawrence County, Tennessee.

It is so ordered.

Signed Thomas A. Higgins
United States District Judge

[1]The clerk submitted the papers tendered by Mrs. Polyak for examination because Ms. Polyak has been enjoined by this Court and the United States court of Appeals for the Sixth circuit from relitigating matters that have been religitated . However, this appear to be a new matter filed on May 10, 1996, and timely removed.

[2] The Court is advised by note from the clerk that Mrs Polyak has tendered civil filing fee of $120.00

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

DORA LEE HULEN

FILED 7-17-96

V

No. 1-96-0112

EARLENE POLYAK

ORDER

In this action, pursuant to the provisions of 28 U.S.C. 636(c)(1)(B), the motion(filed July 8, 1996);to dismiss counterclaim and remand is referred to the Magistrate Judge for consider eration, submission of proposed findings of fact and recommendation for disposition.

It is so ordered.

Signed Thomas A. Higgins

United States Judge

1 Mrs. Polyak also filed a motion July 12, 1996 to set aside the motion to dismiss motion to dismiss to dismiss

2 No trial date has been set ye

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

DORA LEE HULEN AND
WILMA LESNANSKY
Plaintiffs

v

FILED JUL 24 1996

NO. 1-96-0112

EARLENE POLYAK /
EARLENE POLYAK

Counter-plaintiff

v

FRANK HULEN ESTATE, DORA LEE
HULEN AND WILMA LESNANSKY /

NOTICE OF NON-CONSENT TO MAGISTRATE JURISDICTIO

DEfendant-Plaintiff gives notice of non-consent to Magistrate jurisdiction pursuant to 28 U.S.C.(c)(1) in the action to dismiss counte claim and to remand in order issued July 16, 1996. Plaintiff filed a motion to set aside motion to dismiss counterclaim and to remand on July 12, 1996.This notice of non-consent is timely within ten (10) days.

Plaintiff grounds this notice of non-consent in the belief that United States Judge Higgins has original jurisdiction when case was accepted in the United States District Court and she does not consent to Magistrate.

BEST AVAILABLE COPY

Plaintiff moves for oral argument and jury trial date pursuant to the Seventh Amendment, due process of law in the deprivation of property to be sold at Public Auction pursuant to the Fifth and full and equal protection of law under the fourteenth Amendments before United States district Judge.

On the 22nd day of July, 1996.

Respectully submitted,
Earlene Polyak
3179 Middlefield Drive
Trenton, Michigan 48183
(313) 676-3364

Certificate of Service

I certify that a true copy of the pleading has been mailed to Dalton Mounger, 806 Garden Street, P.O. Box 1468, Columbia, Tennesseee 38402 .

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

DORA LEE HULEN
et al., FILED 11-5-96

v No. 1-96-0112

EARLENE POLYAK

ORDER

The Court has before it the Magistrate Judge's Report and Recommendation and entered October 15, 1996) and objections filed October 19, 1996; of the defendant and counter-plaintiff.

The Court has independently reviewed the Magistrate Judge's findings and conclusions, as well as the objections and the entire record. The Report and Recommendation is adopted and approved.

Accordingly the plaintiff's motion filed (July 8, 1996: to dismiss the counterclaim and to remand is granted. The federal law caaims asserted by the defendant and counter-plaintiff are dismissed with prejudice.

This action is remanded to the Chancery

PUBLISHER'S NOTE:

THE FOLLOWING PAGE WAS UNAVAILABLE FOR FILMING

23

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

DORA LEE HULEN et al.,

Plaintiffs

FILED JUN 19 1996

v

No. 1-96-0112
Judge Higgins

EARLENE POLYAK

Defendant

REPORT AND RECOMMENDATION

I. INTRODUCTION

This civil action referred to the Magistrate Judgeby the Honorable Thomas Higgins District Judge, by order entered July 17, 1996 Docket Entry No.5). The Magistrate Judge was directed to prepare proposed findings of fact and recommendation for disposition of Plaintiff motion to dismiss t he defendant's conunterclaim and to remand this action to the state court (Docket Entry No. 3).

Plaintiffs Dora Lee Hulen and Wilma Lesnansky originally filed this declaratory judgment action against the defendant Earlene Polyak,a resident and citizen of Trenton, Michigan.

Plaintiff's seek a declaration on their rights to have a petition of real property consisting of 42.5 acres, a house and barn in Lawrence , County, Tennessee.

This property was a part of the estate of Frank Hulen, the parties father.the plaintiffs seek a declaration of their right to petition t sell thid property with the proceeds therefrom to be distributed among the plaintiffs and defendant equally.

In response to the plaintiffs' complaint Polyak filed an answer and counterclaim in this court attaching thereto a copy of the plaintiff complaint in the state court action.The court treated the defendant's papers as a removal petition under 28 U.S.C. 1441.

In the answer part of her pleading Polyak alleges deprivation of her rights under the Fifth Seventh, and Fourteenth Amendments and asserts claims under 42 U.S.C. 1981,1982, 1983, 28 U.S.C. 2403. In addition to Federal claims Polyak asserts st ate common law claims for fraud and misrepresentation by counsel.

For relief Polyak seeks damages and injunctive relief(and compensatory relief).

As to factual allegations, Polyak alleges December 28, 1995she filed a complaint that was dismissed and the Clerk and master denied of the Court allegedly denied Polyak an appeal. According to Polyak's answer there were two unsuccessful appeals, one which involved an Unappealable order.According to the allegation in her answer, partitions and sales of the property were attempted in 1981 and 1983, and between November 1987, and September 21, 1988.

In the section of Polyak's pleading in the action containing her counterclaim, these claims are for the denial of constitutional right and interest under Tennessee Statute Partition in Kind 29-27-117. Counter-Plaintiff contends that any order divesting her constitutional right and interest in the whole and equal right to the enjoyment of Rena Hulen Estate be set aside pursuant to FEd R. Civ P 60(b). In addition Polyak alleges a denial of her right to a jury trial by the state court and appeal in earlier

For her denial of a jury trial the state court allegedly ruled against her, while the court had another action pending before a jury in another room. The dates of these state court proceeding is alleged 1983. Polyak refers to the dismissal of her appeal because the state trial order was unappealable. Polyak also challenges the transfer of burley tobacco allotment from this property without notice to her.

In their pending motion to dismiss, the plaintiffs argue that Polyak counterclaim in this action is barred by res judicata in the light of prior adjudications of Polyak's rights and legal interest in this property by the United States Court of Appeals for the Sixth Circuit and the state court.Plaintiffs argue that the state courts have also determined Polyak's rights at issue here, but Polyak has repeatedly litigated these claims despite prior court rulings against her. Due to the confusion caused by Polyak vexatious conduct in the Courts Plaintiffs filed this declaratory judgment action to clarify the stat e court record.

in state court action. American National Bank and Trust Co v Clark,586 S.W.2d 825, 826-27(Tenn. 1979); Grange Mut. Casulty v v Walker 652 S.W. 2d 908,900-10 (Tenn Ct. App 1983).

In actions under federal law, the judicial doctrine of res judicata and collateral estoppel have long been evoked to bar action that is based upon legal claims and/or facts asserted in prior action. The res judicata doctrine bars parties from relitigating issues that were or could have been raised in that action.Allen v McCurrey, 449 U.S. 90 94 101 S.Ct 411 66 L Ed 2d 308(1980). Under collateral estoppel doctrine once a court has decided an issue of fact or law necessayr to its judgment, the decision may pre clude relitigation of the issue on a different cause of action involving a party to the first case. Id Montana v United States, 440 U.S. 147 153, 99 S Ct, 59 L Ed 210(1979). Federal law on res judicata and collateral estappoelobtain if prior action involved a federal claim See Allen 449 U.S. at 94-95.

In City of Canton Ohio v Maynard766,F 2d 236, 238 (6th Cir 1985) the Court of Appeals

explained that generally, there were two branch of the res judicata doctrine.

> As a general proposition of the law, there are two branches of res judicata, claim preclusion and issue preclusion.under the claim preclusion branch, an earlier final final judgment on the merits precludes a party from raising an issue in new litigation that should have been advanced in the earlier proceedings. Under the issue preclusion branch,parties are precluded from litigating an issue of law or fact which was necessarily decided in a previous final judgment.

emphasis added and citations omitt ed). Accord Chiles v Trippett,56 F 3d 64 1995 WL 299042(6th Cir 1995).

The absence of identical parties in prior action does not avoid the preclusive effects of res judicata doctrine.

> Smith's issues relating to his parole revocation were properly dismissed under res judicata. Smith had a fair opportunity to fully litigate his parole revocation claims in a mandamus/habeas corpus action brought before the Ohio court pf Appeals Tenth appellate District... Smith argues that claim preclusion does not apply in this case because the defendants in this state action differes differed from the defendants in the instant case. However both Capots and Flannery are privies of OAPA and thus satisfy the requirements for res judicata.

Smith v Capots, 78 F #d 585 1996 WL99322(6th

In the prior federal action caused by plaintiffs, the Sixth Circuit entertained nine actions filed by Polyak in this District, contesting the partition and sale of property inherited from the parties parents.The Sixth Circuit noted that failing to prevail in state court litigation, Mrs Polyak began her assult on the petition sale in federal court in 1985. The parties in the Sixth Circuit action included the Plaintiff Lesnansky here and Polyak's brother The Court of Appeals concluded:

> Additionally, a review of the long history of Mrs Polyak litigation reveals that she once again seeking to relitigate the partition sale of the family farm.Although she is claiming the unconstitutional depriv ation of a property interest, her claim is nothing more than recycled argument that could have been raised in 1976 duuring the property's partition. The same deprivation of tobacco allotment argument has been argued on appeal at least four times and sanctions were i mposed against Mrs. Polyak in case Nos.91-5655/5656/5657 which assert her numerous cases be reopened on the basis of new evidence.Affording the same res judicata effect of Tennessee state court judgment as would Tennessee courts. Migra v Warren City School District Bd of Educ., 465 U.S. 75(1984), it is submitted that the doctrine of resjudicata bars con sideration of all claims which were or reasonably could have been litigated by

1996).

All of these claims appear to have been asserted in Polyak's federal action and subsequent appeal, or could have been asserted in the several actions culminated in her Sixth Circuit appeal quotated above. Polyak claims in her counterclaim in this action include events allegedly occuring in 1981, 1983, 1987 court proceedings. The alleged partition and alleged denial of federal tobacco allotment claim were clearly presented and determined in that appeal. From pendency of this action in the state court there remains the prospect of appeal.

Given the nature of Polyak counterclaim the allegation in her pleadings, the Magistrate Judge concludes that the Court should adopt the above quotated rationale of Sixth circuit Court of Appeals that doctrine of res judicata bars Polyak additional attempt to determine matters previously determined adverse to her in the state and federal courts. Polyak's claims claims in this action should be remanded to state courts.

For these reasons, the Magistrate Judge recommends that the plaintiffs' asserted federal claims be dismissed with prejudice and that Plaintiff's motion to remand this action to the state be granted. Under Rule 72(b) of the FRcivP, any party has ten(10) days from the receipt of this Report and Recommendation in which to file any written objections with the District Court. Any party opposing said objections shall have ten(10) days of receipt of any objections. Failure to file specific objections can constitute wavier Thomas v Arn, 474 U.S. 140 106 S.Ct. 466 L.Ed. 2d 435(1985) .

ENTERED this the 10th day of October, 1996.

Signed William J. Hayes Jr.
United States Magistrate Judge

NOTICE OF OPPORTUNITY TO CONSENT TO THE EXERCI
OF CIVIL JURISDICTION BY A MAGISTRATE JUDGE AN
APPEAL OPTION

In accirdance with the provision of 2
U.S.C. 636(c) and Fed R. Civ.P. 73, you are hereby nitified that the United State judge of this district court, in addition to their other duties,may, upon consent o all parties in a civil case, including a non-jury trial, and order the entry of a final judgment.

You should be aware that your decision to consent, or not to consent, to the referral of your case to a United States magistrate judge for disposition is entirely voluntary and should be indicate by counsel endorsing attached consent for for the plaintiff(s) and defendant(s).If the form is executed by all counsel for the parties, It should be communicated solely to the clerk of the court. ONLY if all parties to the case consent to the reference to a magistrate judge will either the judge or magistrate judge to whom the case has been assigned be inform of your decision.

Your opportunity to have your case dis-
posed by a magistrate judge is subject to calendar requirements of the court.Accord-
ingly the district judge to whom your cas is assigned must approve the reference of the case to a magistrate judge for dis
position

In accordance with 28 u.S.C. 636(c)(30 an Fed.R.Civ.P 73(c) an appeal form a judgme entered by magistrate judge may be taken directly to the United States Court of Appeals ... this frim U.S. District Court West Palm Beach, Florida 33401

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

DORA LEE HULEN AND
WILMA LESNANSKY

Plaintiffs

v

No. 1-96-0112
Judge Higgins

EARLENE POLYAK /

EARLENE POLYAK

Plaintiff

v

FRANK HULEN ESTATE, DORA LEE
HULEN AND WILMA LESNANSKY /

NOTICE OF RESIDENCY
AND MOTION FOR PROTECTIVE ORDER

Plaintiff-Defendant gives notice of residency at 145 Lakeside Drive, Jupiter, Florida 33458 Phone (407) 743-9544 during the winter months of 1996-1997. All mail and telephone call from 3179 Middlefield Drive Trenton, Michigan 48183 Ph: (313) 676-3364 will be forwarded during this time.

Plaintiff resided during cold winter months due to health problems in Florida.

Plaintiff motions for a protective order against unnecessary travel during winter months due to the burden on health.

I certify that a true copy of this pleading has been nailed to Dalton Mounger, 806 A South Garden Street, P.O. Box 1468,Columbia, Tennessee on the 24th day of September 1996.

Respectfully submitted,

Earlene pPolyak
145 Lakeside Drive
Jupiter, florida 33458
(407) 743-9544

APPENDIX C

In the Chancery Court of Lawrence County, Tennessee.

Dora Lee Hulen and Wilma Lesnansky v Earlene Polyak, Chancery no. 7951-96.

Field: May 10, 1996.

Counterclaim Earlene Polyak v Frank Hulen Estate, Dora Lee Hulen and Wilma Lesnansky U.S. District Court No. 1-96-0112.

Removed: June 21, 1996.

Second Order to sell Frank Hulen and Wilma Lesnansky v Earlene Polyak Chancery No. 1974 August 21, 1987.

Frank Hulen and Wilma Lesnansky Residents and Citizens of Lawrence County, Tennessee v Earlene Polyak Non-resident Chancery No,1974.

Filed: April 19, 1983.

CHANCERY COURT OF LAWRENCE COUNTY, TENNESSEE

DORA LEE HULEN AND
WILMA LESNSNAKY — FILED MAY 10,1996

Plaintiff — No. 7951-96

v

EARLENE POLYAK

Defendant

COMPLAINT

Plaintiffs, for their complaint against Defendant, state as follows;

1. Plaintiffs Dora Lee Hulen and Wilma Lesnansky are citizens and residents of Lawrence county, Tennessee.

2. Defendant Earlene Polyak is a citizen and resident of Trenton, Michigan.

3. Frank Hulen, Plaintiff Wilma Lesnansky and Defendant Earlene Polyak were owners as tenants in common, of certain property in Lawrence County, Tennessee, as mor particularly described ad follows:

> Situated and lying and being in the old 14th Civil District(Now Third)of Lawrence County,and BEGINNING at a stone in the turn of the Jonestown Road;thence east

with said raos 96 poles;the Southeast corner of the tract of land of which this is a part;thence North 71 poles to a stake in the east boundary of said tract of land of which this is a part;thence west 96 poles to a willow oak in the west boundary of a tract of land of which this is a part;thence South 71 poles to the beginning and containing 421/2 acres more or less.

Frank Hulen, Plaintiff Wilma Lesnansky and Defendant Earlene Polyak each owned an undivided one third(1/3) interest in real property.

4. Frank Hulen died April 11, 1996 and Plaintiff Dora Lee Hulen is the Execurtor of his estate and the sole beneficiary under his will. Therefore, she is now the owner of Frank Hulen's undivided one third(1/3 interest in real property

5. Pursuant to Tennessee Code Annotated 29-27-101 and 29-27-201, Plaintiffs are entitled to have the subject property sold for partition.

The subject real property contains 42.5 acres and a house and barn are located there.

6. It would be mainfestly to the advantage

of the parties that the property be sold for partition instead of partitioned in kind, there being only one house and barn.

PREMISES CONSIDERED, PLAINTIFFS PRAY

1. That proper process issue and be served upon the Defendant requiring her to answer the complaint.

2. That the rights of the parties to said land be settled and declared by decree of the Court and that the said tract of land be sold and the proceeds be divided equally among Plaintiffs and Defendant equally in accordance with their respective rights. And that the Clerk and Master be appointed Special Commissioner.

3. That the Plaintiffs have further and other relief as the nature of this case may require.

4. That all Court costs be adjudicated against the Defendant.

Respectfully submitted,
s/ Dora Lee Hulen
Wilma Lesnansky
Dalton M Mounger
Attorney for Plaintiffs
806A South Garden Street

P.O. Box 1468
Columbia, Tennessee
38402-1468
(615) 380-9005

CHANCERY COURT FOR LAWRENCE CLUNTY, TENNESSEE
AT LAWRENCEBURG

DORA LEE HULEN AND
WILMA LESNANSKY
Plaintiff

FILED FEB 11 1998

v

No. 7851-96

EARLENE POLYAK
Defendant

ORDER FOR SALE

The Clerk and Master is ordered to sell th land in the Complaint at public auction pursuant to the provisions of Tennessee Code Annonated 35-5-101 et seq.;the Clerm and Master is specifically authorized to secure the services of an auctioneer licensed in this state to conduct such public sale, and the expenses of the sale and the auctioneer shall be paid from the proceeds of the sale.

Dated this 11th day of February, 1998

s/Jim T. Hamilton

JUDGE JIM HAMILTON

Approved for entry:
Dalton Mounger
Attorney of Plaintiff

CERTIFICATE OF SERVICE

I Dalton Mounger hereby certify that I have this 11 day of February, 1998, mailed a copy of the foregoing Order for Sale to Earlene Polyak, 3179 Middlefield Drive, Trenton, Michigan 48183.

s/Dalton Mounger

CHANCERY COURT OF LAWRENCE COUNTY, TENNESSE

FRANK HULEN AND WILMA LESNANSKY

AUG 1987

Plaintiffs

v Civil Action 1974

EARLENE POLYAK

Defendant

ORDER

Upon motion of plaintiffs to sell that certain parcel of land formerly at issue in this lawsuit, said sale having been ordered by this Court and said order having been affirmed through all states of the appellate process,it is hereby ORDERED as follows:

1. Col Eulan Hooper is hereby authorized and directed to advertise,on behalf of the parties herein, the sale of land describer in Exhibit 1 hereto under the following terms and conditions of thid order:Mr. Hooper will adver tise sale in a newspaper of general circulatio in the Lawrence County Advocate, said sale to be conducted at Public Auction pursuant to this order in a Saturday at 10:00a.m.,said

date to be determind by Mr. Hooper and set out in the advertisement and not be run no less than separate issues of said paper prior to the date of sale.Said sale shall be conducted in a manner consistent with the normal and usual practice for auction sales held in Lawrence County, Tennessee, and the land shall be sold to the highest and best bidder for cash, ter 10 % of payment to be delivered on the date of of sale and be held by mr. Hooper, in trust,for deposit into the registry of this Court on the following Monday. The remainder shall be due by 12:00 noon on the aforesaid "following Monday payable to Lawrence County Clerk & Master's office,who shall in turn deposit same in the Court's registry.

2. Upon deposit of said funds into the registry of the Court, the Clerk & Master is directed and authorized to prepare an appropriate deed conveying title to the property as ordered herein to the purchaser of said land at auction, or his designee. Said deed shall divest

all parties hereto of all right, title, and interest in and to said land pursuant to this previous and previous orders of this Court.

3. Upon delivery of the above referenced deed, and payment of the purchase price for th land into the registry of this court, the Cler & Mastershall divide the net proceeds equally amoung the parties hereto,after having paid Mr Hooper a fee for his services in connection with said auction as ordered herin in the amount of 6%of the gross amount received at auction plus reimbursement for any reasonable costs concurred in conducting auction sale ,in addition, the Clerk & Master shall be paid a fee for her services in the amount of $250,and shall pay from the defendant's portion of the proceeds,all court costs incurred since this case was initially filed. Thereafter, the Cler & Master shall pay to the parties the net amou due each party pursuant to Court's order of partition,subject, however,to payment by the Clerk & Master of debts of all creditor's of

record of any party who have a lein against in any interest in said land as a result of leins against a party's interest therein,Such leins of record shall attach to the proceeds of the land the same as attached to the actual land.

4. All matters are reserved pending further orders of the court.

So ORDERED this day of September 1987.

s/ Hon Jim T. Hamilton,Circuit Judge

APPROVED FOR ENTRY:
s// Robert E. Boston
Attorney for Plaintiffs

I certify that a copy of the foregoing order has been mailed to Earlene Polyak at 3179 Middlefield Drive, Trenton, Michigan 48183:and 4063 Hood Road, Lake park, Florida on the 21st day of August, 1987

s/ Robert E. Boston

CHANCERY COURT OF LAWRENCE COUNTY, TENNESSEE

FRANK HULEN AND
WILMA LESNANSKY,
both citizens and
residents of Lawrence
County, Tennessèe

FILED APRIL 19,1983

CASE NO. 1974

v

EARLENE POLYAK, a non-
resident presently
residing at 3179
Middlefield Drive,
Trenton, Michigan
48183

COMPLAINT

Plaintiffs would respectfully state and show unto this Honorable Court the following:

1.

That Rena Ann Hulendied intestate on or about the 9th day of January 1976: that at the time of her death she was 84 years of age and a permnate resident of LaWRENCE County, Tennessee that she died seized at possessed a tract of land situated, lying and being in the 14th Civil District of Lawrence County, Tennessee,which more bounded and described as reflected by a copy of the deed which is hereto attached and marked as Exhibit A as fully as if copied here

That said Rena Hulen left no husband surviving her and there are no known encumbrances as of the date of her death on said tract known to the plaintiffs, and if there are any encumberances upon said tract since her death, such is unknown to the plaintiffs.

11.

That said Rena Ann Hulen,deceased left the following lawful children, Frank Hulen, Wilma Lesnansky and Earlene Polyak,all of whom are living and parties to this action.

111.

The said parties are the owners of said tract of land, or have an interest therein as tenants in common, or otherwise in equal portion of one third 1/3 interest therein to each of said parties plaintiff and defendant.

~~1V.~~

That said tract of land is worht a consider able sum of money, is rural property and is adapted esclusively to farming uses. It would be manifestly to the advantage of the parties that

be sold for partition instead of partitioned in kind,there being only one house, one well, and otherwise situated that it would not be feasable nor practical to divide same in kind.

V.

The various tenants in common are residents of Lawrence County, Tennessee, and the defendant Earlene Polyak,occasionally comes to Lawrence County, Tennessee, goes upon the land in question makes various and sundry changes upon the property, including the dwelling house located ther and the plaintiff have reason to believe that she intends to make various changes in said propert y and said buildings,including possibly drilling a well and the plaintiff herein are of the opinion that unless this Honorable Court restraind her such changes and expensitures will be detrimental to the value of same.

THEREFORE PREMISES CONSIDERED, PLAINTIFFS PRAY:

1. That the named defendant in the caption be made such by service of process, including

publication if necessary and that she be required to answer this complaint.

2.That the rights of the parties to said land be settled and declared by the Decree of the Court and that said tract of land be sold and the proceeds,after satisfying the expense of this action, be divided among the parties in accordance with their respective rights and to this end that all necessary referance to the master be made.

3. That this Honorable Court issue a restraining order restraining the defendant, her agents, employees, servants or attorneys from making any changes,alterations to the buildings located upon the tract of land described and that she be restrained from drilling or causing to be drilled any wells upon said property expressley authorized by Court.

4. That the plaintiffs have such other, further, different and general relief as the facts of this case may warrent.

THIS IS THE FIRST APPLICATION FOR EXTRA-

ORDINARY PROCESS IN THIS CAUSE.

s/ Frank Hulen

s/ Wilma Lesnansky

s// William E. boston
Boston Bates & Holt
Attorneys for Plaintiffs
235 Waterloo Street
P.O. Box 357
Lawrenceburg, Tennessee 38464

SS// we absolutely ourselves bound for the cost of Imp not to exceed 500.00

s/ Frank Hulen
s/ WmBoston

CHANCERY COURT OF LAWRENCE COUNTY, TENNESSEE

FRANK HULEN AND WILMA LESNSNAKY,both citizens and residents of Lawrence County, Tennessee

FILED APRIL 19 1983

v

NO. 1974

EARLENE POLYAK, a non-resident presently residing at 3179 Middlefield Drive, Trenton, Michigan 48183

RESTRAINING ORDER

The above matter having come to be heard on this 19th day of April, 1983. Complainants appearing by their attorney , William E. Boston and the Court having examined the Complaint, duly verified by Complainants, the Court finds from the from the verified complaint that the Complainants are entitled to a temporary restaining order, and the same to issue upon filing of the Complaint and restraining order in the Office of the clerk.

IT IS THERFORE, ORDERED that defendant Earlene Polyak, be restrained from making any changes,alterations, repairs and/or improvements on said property.

This the 19th day April , 1983, at 1:15 O'clock P.M.

s/ Robert L. Jones
JUDGE

CHANCERY COURT OF LAWRENCE COUNTY, TENNESSEE

DORA LEE HULEN AND
WILMA LESNANSKY

Plaintiff

v

EARLENE POLYAK

Defendant /

JURY TRIAL DEMAND
FILLED JUN 12,1996
No. 7951 96

EARLENE POLYAK

Counter-Plaintiff

v

FRANK HULEN ESTATE, DORA
LEE HULEN AND WILMA
LESNANSKY

Defendants /

REQUEST TO RECUSE

Counter-Plaintiff,Earlene Polyak requests that the Honorable Jim Hamilton recuse from the above and all cases regarding her in this or any Court Sustem. This request to recuse is grounded in experience in which Judge Hamilton has never granted a motion, petition,or order in which she has requested relief from the Court and Judge Hamilton takes complaints, motions, and petitions addressed to other Judges and denies relief requested from the Court.

IN VIEW OF THE ABOVE, Earlene Polyak believes that the Judge is prejudiced to her personally dislikes her, too biased to local personnel to invoke justice in this Court fo her relief.

I certify that a true copy of this request has been mailed to attorney for Fran Hulen Estate, unknown, Dalton Mounger, 806A Aouth Garden Street, P.O. Box 1468, Columbia Tennessee 48402-1468 on the 4th Day of June, 1996.

Respectfully submitted

s/ Earlene Polyak
3179 Middlefield Drive
Trenton, Michigan 4818
(313) 676-3364

IN THE COUNTY COURT OF LAWRENCE COUNTY, TENN

IN RE: ESTATE OF RENA HULEN

ORDER Filed AUG 30 1976

This cause came on to be heard this 30th day of August, 1976, before the Honorable Bill Beecham, Judge of the County Courty of lawrence County, Tennessee, upon the original petition heretofore, filed in this cause,the oral proof introduced in Open Court, and the entire record in this cause,from all of which it appears that Rena Ann Hulen died intestate on the 9th day of january, 1976:that at the time of her death she was 84 years of age,and a permanent citizen and resident of Lawrence County, Tennessee. That she left surviving her three children, Frank Hulen, Wilma Lesnansky, Earlene Polyak,the latter being a resident of Trenton, Michigan. It further appears to the satisfactionof the Court that the propre parties to serve as co-Administrators of the estate of the late Rena Ann Hulen are the heirs , Earlene Polyak, Frank Hulen and Wilma

Lesnansky.The Court is therefore, pleased to and does here and now appoint said Earlene Polyak, Frank Hulen and Wilma Lesnansky as Co-Administrators of the estate of Rena Ann Hulen upon them executing bond in the sum of $30,000, taking the oath of office,and other wise complying as the law directs,after which the Clerk of the County court of Lawrence County, Tennessee, is hereby directed to issue letterws of Co-Administration to Earlene Polyak, Frank Hulen and Wilma Lesnansky as Co-Administrators of the estate of the late Rena Ann Hulen, and they are here and now charged with all of the duties and responsibilities incindental thereto and, likewise, clothed with all of the powers and authority as such Co-Administrators.

This the 30th day of August 1976.

Signed
Bill E. Beecham,
County Judge